

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure	)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency	)	
Calling Systems	)	
	)	
Amendment to Petition for Temporary Waiver	)	
by Leaco Rural Telephone Cooperative, Inc.	)	
	)	

**ORDER**

**Adopted: December 20, 2007**

**Released: December 20, 2007**

By the Chief, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. In this Order, we address a request for relief from the Commission's wireless Enhanced 911 (E911) Phase II requirements filed by Leaco Rural Telephone Cooperative, Inc. (Leaco),<sup>1</sup> a Tier III wireless service provider.<sup>2</sup> Leaco seeks an extension of time from its current deadline to comply with the requirement in Section 20.18(g)(1)(v) of the Commission's rules that carriers employing a handset-based E911 Phase II location technology were to have achieved 95% penetration among their subscribers of location-capable handsets by December 31, 2005.<sup>3</sup>

2. Pursuant to the ENHANCE 911 Act,<sup>4</sup> and based on the record before us, we find that relief from the 95% penetration requirement is warranted, subject to certain conditions described below. We therefore grant Leaco a further extension, until March 12, 2008, to achieve 95% penetration among its subscribers of location-capable handsets.

<sup>1</sup> Amendment to Petition for Temporary Waiver of Section 20.18(g)(1)(v) of the Commission's Rules, CC Docket No. 94-102 (filed Sept. 12, 2007) (Petition).

<sup>2</sup> Tier III carriers are non-nationwide Commercial Mobile Radio Service (CMRS) providers with no more than 500,000 subscribers as of the end of 2001. See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Phase II Compliance Deadlines for Non-Nationwide Carriers, CC Docket No. 94-102, *Order to Stay*, 17 FCC Rcd 14841, 14848 ¶ 22 (2002) (*Non-Nationwide Carriers Order*).

<sup>3</sup> 47 C.F.R. § 20.18(g)(1)(v). The Commission previously granted Leaco waiver relief from the 95% handset penetration deadline until September 12, 2007. Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order*, 22 FCC Rcd 4835, 4839-40 ¶ 12 (2007) (*Leaco Waiver Order*).

<sup>4</sup> National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

## II. BACKGROUND

### A. Phase II Requirements

3. The Commission's E911 Phase II rules require wireless licensees to provide Public Safety Answering Points (PSAPs) with Automatic Location Identification (ALI) information for 911 calls.<sup>5</sup> Licensees can provide ALI information by deploying location information technology in their networks (a network-based solution),<sup>6</sup> or Global Positioning System (GPS) or other location technology in subscribers' handsets (a handset-based solution).<sup>7</sup> The Commission's rules also establish phased-in schedules for carriers to deploy any necessary network components and begin providing Phase II service.<sup>8</sup> However, before a wireless licensee's obligation to provide E911 service is triggered, a PSAP must make a valid request for E911 service, *i.e.*, the PSAP must be capable of receiving and utilizing the data elements associated with the service and must have a mechanism in place for recovering its costs.<sup>9</sup>

4. In addition to deploying the network facilities necessary to deliver location information, wireless licensees that elect to employ a handset-based solution must meet the handset deployment benchmarks set forth in Section 20.18(g)(1) of the Commission's rules, independent of any PSAP request for Phase II service.<sup>10</sup> After ensuring that 100% of all new digital handsets activated are location-capable, licensees were required to achieve 95% penetration among their subscribers of location-capable handsets no later than December 31, 2005.<sup>11</sup>

### B. Waiver Standards

5. The Commission has recognized that smaller carriers may face "extraordinary circumstances" in meeting one or more of the deadlines for Phase II deployment.<sup>12</sup> The Commission previously has stated its expectations for requests for waiver of the E911 Phase II requirements. Waiver requests must be "specific, focused and limited in scope, and with a clear path to full compliance. Further, carriers should undertake concrete steps necessary to come as close as possible to full compliance . . . and should document their efforts aimed at compliance in support of any waiver requests."<sup>13</sup> To the

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<sup>5</sup> See 47 C.F.R. § 20.18(e).

<sup>6</sup> Network-based location solutions employ equipment and/or software added to wireless carrier networks to calculate and report the location of handsets dialing 911. These solutions do not require changes or special hardware or software in wireless handsets. See 47 C.F.R. § 20.3.

<sup>7</sup> Handset-based location solutions employ special location-determining hardware and/or software in wireless handsets, often in addition to network upgrades, to identify and report the location of handsets calling 911. See 47 C.F.R. § 20.3.

<sup>8</sup> See 47 C.F.R. §§ 20.18(f), (g)(2).

<sup>9</sup> See 47 C.F.R. § 20.18(j)(1).

<sup>10</sup> See 47 C.F.R. § 20.18(g)(1).

<sup>11</sup> See 47 C.F.R. § 20.18(g)(1)(v).

<sup>12</sup> *Tier III Carriers Order*, 20 FCC Rcd at 7714 ¶ 9; see also *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846 ¶ 20 (stating that "wireless carriers with relatively small customer bases are at a disadvantage as compared with the large nationwide carriers in acquiring location technologies, network components, and handsets needed to comply with our regulations"); Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers, CC Docket No. 94-102, *Order to Stay*, 18 FCC Rcd 20987, 20994 ¶ 17 (2003) (*Order to Stay*) (stating that "under certain conditions, small carriers may face extraordinary circumstances in meeting one or more of the deadlines for Phase II deployment and . . . relief may therefore be warranted").

<sup>13</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442, 17458 ¶ 44 (2000).

extent that a carrier bases its request for relief on delays that were beyond its control, it must submit specific evidence substantiating the claim, such as documentation of the carrier's good faith efforts to meet with outside sources whose equipment or services were necessary to meet the Commission's benchmarks.<sup>14</sup> When carriers rely on a claim of financial hardship as grounds for a waiver, they must provide sufficient and specific factual information.<sup>15</sup> A carrier's justification for a waiver on extraordinary financial hardship grounds may be strengthened by documentation demonstrating that it has used its best efforts to obtain financing for the required upgrades from available federal, state, or local funding sources.<sup>16</sup> The Commission also noted, in considering earlier requests for relief by Tier III carriers, that it

expects all carriers seeking relief to work with the state and local E911 coordinators and with all affected PSAPs in their service area, so that community expectations are consistent with a carrier's projected compliance deadlines. To the extent that a carrier can provide supporting evidence from the PSAPs or state or local E911 coordinators with whom the carrier is assiduously working to provide E911 services, this would provide evidence of its good faith in requesting relief.<sup>17</sup>

6. In applying the above criteria, the Commission has in the past recognized that special circumstances particular to smaller carriers may warrant limited relief from E911 requirements. For example, the Commission has noted that some Tier III carriers face unique hurdles such as significant financial constraints, small and/or widely dispersed customer bases, and large service areas that are isolated, rural, or characterized by difficult terrain (such as dense forest or mountains), along with a corresponding reduced customer willingness to forgo existing handsets that may provide expanded range, but are not location-capable.<sup>18</sup> In evaluating requests for waiver from Tier III carriers, the Commission, therefore, has considered challenges unique to smaller carriers facing these circumstances.

7. Finally, we note that distinct from the Commission's rules and established precedent regarding waivers of the E911 requirements, in December 2004 Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act).<sup>19</sup> The ENHANCE 911 Act, *inter alia*, directed the Commission to act on any petition filed by a qualified Tier III carrier requesting a waiver of Section 20.18(g)(1)(v) within 100 days of receipt, and to grant such request for waiver if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."<sup>20</sup>

<sup>14</sup> See *Order to Stay*, 18 FCC Rcd at 20996-97 ¶ 25.

<sup>15</sup> See *id.* at 20997 ¶ 29. We note that the Commission generally is disinclined to find that financial hardship alone is a sufficient reason for an extension of the E911 implementation deadlines. *Id.*

<sup>16</sup> See *id.*

<sup>17</sup> *Id.* at 20997 ¶ 28.

<sup>18</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7718, 7719, 7726, 7732, 7736-37 ¶¶ 17, 19, 37, 57, 70.

<sup>19</sup> National Telecommunications and Information Administration Organization Act – Amendment, Pub. L. No. 108-494, 118 Stat. 3986 (2004).

<sup>20</sup> *Id.* at § 107(a), 118 Stat. 3986, 3991. The ENHANCE 911 Act defines a "qualified Tier III carrier" as "a provider of commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)) that had 500,000 or fewer subscribers as of December 31, 2001." *Id.* § 107(b), 118 Stat. 3986, 3991.

### C. Leaco's Request for Further Waiver

8. Leaco is a Tier III carrier providing cellular service in rural areas of New Mexico.<sup>21</sup> Leaco completed the CDMA overlay of its TDMA network in January 2007.<sup>22</sup> In December 2006, Leaco requested that the Commission allow it an additional nine months, until September 12, 2007, to achieve a 95% location-capable handset penetration rate.<sup>23</sup> The Commission granted Leaco's request, subject to conditions and reporting requirements, and established a compliance deadline of September 12, 2007.<sup>24</sup>

9. In the instant Petition, Leaco describes various efforts to achieve compliance with the handset penetration deadline, including bill inserts to customers, print and radio advertising, and offering free features and other promotions to customers who upgrade to CDMA service.<sup>25</sup> Leaco reports that these efforts resulted in a handset penetration rate of approximately 81% at the time it filed its petition.<sup>26</sup> Nonetheless, Leaco states that it will require an additional six months, until March 12, 2008, to achieve a 95% location-capable handset penetration rate.<sup>27</sup> Leaco states that it plans to implement increasingly aggressive measures in order to achieve 95% penetration, including informing users of non-location-capable, high-powered analog phones that "Leaco has plans to discontinue the provision as early as February 18<sup>th</sup> of [2008,] at which point their current handsets will no longer function on Leaco's wireless network."<sup>28</sup>

10. In support of its request, Leaco states that it "still has customers who cling to their three-watt analog 'bag' phones with their greater range than digital, location-capable handsets."<sup>29</sup> Leaco asserts that without the requested relief, those customers would "lose access to vital mobile communications capabilities, including emergency services."<sup>30</sup> Leaco argues that, for these reasons, its request meets the standard for relief under the ENHANCE 911 Act as well as the Commission's E911 waiver standards.<sup>31</sup>

### III. DISCUSSION

11. We believe that it was critical for all handset-based carriers to have met the final implementation deadline of December 31, 2005 for 95% location-capable handset penetration, if at all possible, in order to allow all stakeholders (including carriers, technology vendors, public safety entities, and consumers) to have greater certainty about when Phase II would be implemented and would have

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<sup>21</sup> Petition at 2.

<sup>22</sup> *Id.*

<sup>23</sup> Petition of Leaco Rural Telephone Cooperative, Inc. for Temporary Waiver of Section 20.18(g)(1)(v) of the Commission's Rules, CC Docket No. 94-102 (filed Dec. 12, 2006). The Commission had previously granted Leaco an extension of the deadline until December 12, 2006. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Petition for Enhanced 911 Phase II Waiver by Leaco Rural Telephone Cooperative, Inc., CC Docket No. 94-102, *Order*, 20 FCC Rcd 20600, 20610 ¶ 27 (2005)

<sup>24</sup> *Leaco Waiver Order*, 22 FCC Rcd 4835, 4839-40 ¶ 12.

<sup>25</sup> Petition at 3-4.

<sup>26</sup> *Id.* at 2. In its November 1, 2007 quarterly report, Leaco reported a handset penetration rate of 83%. *See* Leaco November 1, 2007 Quarterly Report at 2.

<sup>27</sup> Petition at 2.

<sup>28</sup> *Id.* at 4.

<sup>29</sup> *Id.* at 2.

<sup>30</sup> *Id.* at 7.

<sup>31</sup> *Id.* at 5-6.

ensured that Phase II would be fully implemented as quickly as possible.<sup>32</sup> Absent Phase II location data, emergency call takers and responders must expend critical time and resources questioning wireless 911 callers to determine their location, and/or searching for those callers when the callers cannot provide this information. At the same time, however, the Commission has recognized that requests for waiver of E911 requirements may be justified, but only if appropriately limited, properly supported, and consistent with established waiver standards.<sup>33</sup> Accordingly, when addressing requests for waiver of the 95% handset penetration deadline, we are mindful that delay in achieving the required handset penetration level could impair the delivery of safety-of-life services to the public. We must also remain mindful, however, of Congress's directive in the ENHANCE 911 Act to grant Tier III waivers if strict enforcement would result in consumers having decreased access to emergency services.<sup>34</sup>

12. We remain concerned that Leaco's efforts have fallen short in achieving compliance with the 95% benchmark. Nonetheless, consistent with the directive of the ENHANCE 911 Act, we find that certain of Leaco's customers would likely find it more difficult, and at times impossible, to contact a PSAP in parts of Leaco's service area if those customers were forced to convert from analog phones to location-capable handsets. It thus appears likely that strict enforcement of Leaco's September 12, 2007 deadline would impair the ability of certain 911 callers to reach emergency assistance, and "would result in consumers having decreased access to emergency services," within the meaning of the ENHANCE 911 Act, at least in some cases.<sup>35</sup> We therefore conclude that some relief from the deadline is warranted pursuant to the ENHANCE 911 Act.<sup>36</sup> Accordingly, we grant Leaco the extension it requests, subject to certain conditions and reporting requirements so that the Commission can continue to monitor Leaco's progress in meeting the 95% handset penetration benchmark.<sup>37</sup> Although we grant a limited extension to Leaco, we emphasize that absent Leaco undertaking all necessary efforts to ensure timely compliance, Leaco should not assume that the Commission would act favorably on any future request for relief based on the same grounds.

13. *Conditions.* As a condition of the relief granted herein, Leaco has an ongoing obligation, until it achieves a 95% handset penetration rate among its subscribers of location-capable handsets, to (1) notify its customers, such as by billing inserts, of the status of PSAP requests for Phase II service, to the effect that by upgrading their handsets they will have the ability to automatically transmit their location information, and (2) actively work with the PSAPs to keep them informed of its progress in achieving higher location-capable handset penetration rates.

14. *Reporting Requirements.* Finally, in order to monitor compliance in accordance with the relief granted herein, we will continue to require Leaco to file status reports every February 1, May 1, August 1, and November 1, but extend these reporting requirements until May 1, 2009.<sup>38</sup> These reports

<sup>32</sup> See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14853 ¶ 38.

<sup>33</sup> See *Tier III Carriers Order*, 20 FCC Rcd at 7709-10 ¶ 1; *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14842-43 ¶ 6.

<sup>34</sup> See *supra* ¶ 7.

<sup>35</sup> Pub. L. No. 108-494, § 107(a), 118 Stat. 3986, 3991.

<sup>36</sup> Because we find that relief from the 95% handset penetration requirement is warranted pursuant to the ENHANCE 911 Act, we need not determine whether Leaco's Request satisfies the Commission's E911 waiver criteria.

<sup>37</sup> We note that the Commission has not received any objections from the public safety community specific to the instant request.

<sup>38</sup> See *Leaco Waiver Order*, 22 FCC Rcd at 4840 ¶ 14 & n.40. We note that we are requiring Leaco to file status reports beyond the date on which we require it to achieve 95% penetration among its subscribers of location-capable handsets. We believe it is important to continue monitoring Leaco's progress for an additional year following its revised deadline.

shall include the following information, as previously required: (1) the number and status of Phase II requests from PSAPs (including those requests it may consider invalid); (2) the dates on which Phase II service has been implemented or will be available to PSAPs served by its network; (3) the status of its coordination efforts with PSAPs for alternative 95% handset penetration dates; (4) its efforts to encourage customers to upgrade to location-capable handsets; (5) the percentage of its customers with location-capable phones; and (6) until it satisfies the 95% penetration rate, detailed information on its status in achieving compliance and whether it is on schedule to meet the revised deadline. To comply with the sixth reporting requirement – status in achieving compliance – Leaco must include a detailed, specific explanation of how it arrived at its estimate of whether it is on track to meet the compliance deadline, including an explanation of any assumptions it has made. It must also include a discussion of how its compliance efforts compare with the efforts of other Tier III carriers – particularly efforts the Commission has cited in previous orders<sup>39</sup> – and an explanation of why Leaco has chosen the compliance efforts it has chosen.<sup>40</sup> We emphasize that irrespective of the relief we grant in this Order, we fully expect Leaco to achieve compliance as quickly as possible.

#### IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to the ENHANCE 911 Act, Pub. L. No. 108-494, 118 Stat. 3986 (2004), and Sections 1.3 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.3, 1.925, that the Petition for Extension of Waiver filed by Leaco Rural Telephone Cooperative, Inc. IS GRANTED, subject to the conditions and reporting requirements specified herein. The deadline for compliance with Section 20.18(g)(1)(v) is March 12, 2008.

16. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Derek Poarch  
Chief  
Public Safety and Homeland Security Bureau

<sup>39</sup> See, e.g., Request for Waiver of Location-Capable Handset Penetration Deadline by Sprint Nextel Corporation, WT Docket No. 05-286, *Order*, 22 FCC Rcd 400, 411-12 ¶ 32 (2007) (describing compliance efforts undertaken by Tier III carriers).

<sup>40</sup> For example, to the extent that Leaco offers free location-capable handsets as an inducement to its subscribers to upgrade non-location-capable handsets, it should explain whether these free handsets were offered without requiring a renewed or extended service contract.